

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

In re:	)	Chapter 11
	)	Case No. 08-35653-KRH
CIRCUIT CITY STORES, INC.,	)	Jointly Administered
<u>et al.</u> ,	)	
	)	
Debtors.	)	
_____	)	

**RESPONSE TO NINTH OMNIBUS OBJECTION TO CLAIMS RE: CLAIM NO. 14402**

GECMC 2005-C2 LUDWIG DRIVE, LLC ("GECMC"), files this Response (the "Response") to the Ninth Omnibus Objection to Claims [ECF No. 10047] (the "Objection") and, in support of the Response respectfully represents as follows:

OLP CCFairview Heights, LLC (the "Landlord") filed claim no. 14402 (the "Claim"), which claim was subsequently assigned to GECMC [ECF No. 5441]. The Objection seeks to reduce the amount of the administrative claim by \$3,192.77 and to disallow and expunge the Claim as untimely.

GECMC does not contest the reduction in the amount of the Claim as proposed in the Objection, however GECMC does contend that the Claim was timely and, in the alternative, if such claim was untimely, it was due to FedEx's "airplane problems" and was not prejudicial to the Debtors. Accordingly, justice requires that the Objection be overruled and the Claim allowed as timely.

As set forth in the Objection, the Administrative Expense Bar Date applicable to the Claim is June 30, 2009 (the "Bar Date"). As indicated by the attached transmittal letter from counsel to the Landlord and FedEx tracking information, the Claim was sent to the claims agent

in these cases on June 29, 2009 via FedEx Priority delivery, which ordinary would have resulted in the Claim being delivered to the claims agent in the morning on June 30, 2009.

FedEx, however, apparently experienced self-described "airplane problems" that resulted in the overnight delivery of the Claim being delayed until July 1, 2009 at 9:10 a.m. Clearly, this was beyond the control of the Landlord and GECMC, and therefore GECMC should not be penalized for FedEx's failure to deliver the Claim to the claims agent as promised.

Moreover, Landlord's counsel has advised that, as a result of the FedEx issue, Debtors' counsel granted Landlord (and all OLP landlords) a 1-day extension of the Bar Date (until July 1, 2009). Accordingly, notwithstanding the FedEx-related delay, the Claim was timely.

Accordingly, because Landlord was granted an extension of time to file the Claim by Debtors' counsel and because the delay in receipt of the Claim by the claims agent was caused by FedEx and was not prejudicial to the Debtors, the Objection should be overruled and the Claim should be allowed as an administrative claim in the reduced amount of \$15,390.52.

Dated: April 6, 2011.

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By: /s/ Mark Sherrill

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-and-

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Counsel for LNR Partners, Inc., as Manager of  
GECMC 2005-C2 LUDWIG DRIVE, LLC

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been served via  
FedEx overnight on April 6, 2011, upon all parties as set forth on the attached service list.

By: /s/ Mark Sherrill  
Mark D. Sherrill

**SERVICE LIST**

Clerk of the Bankruptcy Court  
United States Bankruptcy Court  
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